

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1298

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

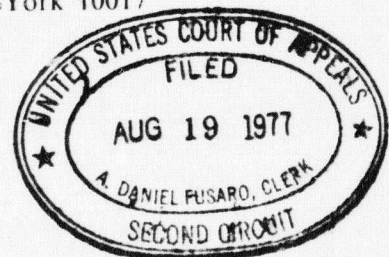
-against-

ROBINSON QUINONES,
Defendant-Appellant.

*On Appeal from the United States District Court for the Eastern
District of New York.*

APPENDIX FOR DEFENDANT-APPELLANT

THOMAS J. O'BRIEN
Attorney for Defendant-Appellant
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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>PAGE</u>
Docket Entries.	1a
Indictment.	4a
Court's Charge to the Jury. .	8a

DOCKET ENTRIES

(pp. 1a-3a)

REAL 17 1
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U.S. DISTRICT COURT

18:371, 2113(a)(d) & 2

OFFENSES CHARGED
 Dad conspire with another
 to bank robbery, use of dangerous
 weapon, etc.

CLOSED

II. KEY DATES & INTERVENTIONS

ARREST or U.S. Custody Began	INDICTMENT ☒ High Risk Date	ARRAIGNMENT 3/21/77	TRIAL Trial Set For 5/2/77 Voor Dirg ☐ Trial Began 5/2/77 Trial Ended 5.77
Summons Served	Indict. Waived ☐	1st Plea " "	NG ☐ G ☐ NOL ☐
First Appearance	In Charging District	Final Plea	NG ☐ G ☐ NOL ☐

☐ Denied
☐ Set
☐ Bail Not Made
☐ Status Changed (See Docket)

☐ Fugitive
☐ Plea Recog
☐ PSA
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Pny Cust
☐ Other

Search Warrant Issued	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME:
Summons Issued	1-19-77	VAC 07AA	PRELIMINARY EXAMINATION OR REMOVAL HEARING		☐ DISMISSED
Arrest Warrant Issued	1-19-77	VAC 07AA	☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT		☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
COMPLAINT					ASC 07E
OFFENSE (In Complaint)	T. 18 USC §§2113(a)(d) & 2 - Bank Robbery				

U.S. Attorney or Asst.

ADEA Schwartz

ATTORNEYS

Defense ☒ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other: PD, CD

Thomas O'Brien

230 Park Avenue, NYC.

947-6147

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	PROCEEDINGS	EXCLUDABLE DELAY
2-7-77	Before CHREIN J -/Indictment filed - Bench warrant ordered/issued.	
2-22-77	Before PLATT, J - case called - deft not present - trial set down for 3-2-77 @ 9: 30 am.	M
3-31-77	Before PLATT, J - case called - deft & counsel Tom O'Brien present - court appoints Thomas O'Brien as counsel under CJA - deft waives reading of the indictment and enters a plea of not guilty - adjd to 4-22-77 to set a date for trial or at 11:30 for motions - Bail set at \$500,000.	
4-4-77	Order signed by Judge Platt appointing Thomas O'Brien as counsel for deft.	
4-8-77	Notice of motion filed for suppressing evidence, Bill of particulars, Inspection etc. (ret 4-22-77)	
4/22/77	Before Platt, J-case called motion to suppress adjd for hearing on day of trial, trial set down for 5/2/77JLJ	

Over

5/2/77	Before Platt, J.-case called-deft & counsel present deft's motion for Wade hearing-deft's motion to suppress-hearing on both motions orderd and begun-hearing contd to 5/3/77.JLJ.	
5.3.77	Before Platt, J.- Case Called. Deft. & Counsel present. Deft's. motion for recusal - Decision REserved. Govt's. motion for 24 hour adjdment argued and granted. Adj. to 5.4.77 at 9:30 A.M.	5/2/77E
5-4-77	Before Platt, J - case called - deft & atty T.O'Brien present. defts motion to recuse - denied. Hearing resumed. Defts motion to be absent from Courtroom granted. Govts rests - hearing concluded - defts motion to suppress argued - hearing contd to May 5, 1977 at 9:30 am. rs.	8P
5-5-77	Before Platt, J.- Case Called. Deft. & Counsel present. Deft's. motions to suppress are denied in all respects. Trial ordered and begun. Jurors were selected and sworn. Govt. opens. Deft. opens. Trial continued to 5.9.77 at 10:00 A.M.	
5.5.77	Before Platt, J.- Case Called. Deft. & Counsel present. Deft's. motions to suppress are denied in all respects. Trial ordered and begun. Jurors were selected and sworn. Govt. opens. Deft. opens. Trial continued to 5.9.77 at 10:00 A.M.	
5/9/77	Before Platt, J-case called-deft & counsel present deft's motion to dismiss the indictment-decision reserved-trial resumed-trial contd to 5/10/77.JLJ	8P
5.9.77	Voucher for Compensation of Expert Services filed and forwarded to Washington for Payment.	
5.10.77	Voucher for Compensation of Expert Services filed and forwarded to Washington for Payment.	8P
5/10/77	Before Platt, J-case called-deft & counsel present-trial resumed-govt rests-deft's motion to suppress is denied in all respects-deft's motion to dismiss on grounds of improper indictment-denied-defts motion to strike testimony re: shotgun-denied-deft's motion pursuant to Rule 29-denied-voir dire of F.T.Lewis ordered & begun-voir dire concluded-Govts motion to bar Lewis testimony made & withdrawn-deft's motion for mistrial-denied-deft rests-trial contd to 5/11/77.JLJ	8P
5-11-77	Before PLATT, J - case called - deft & atty T'O/Brien present. Trial resumed - defts motion for judgment of acquittal denied. Jury retires to deliberate at 12:30. Jury returns with a verdict of guilty on all 3 counts - at 4: PM. Jury discharged - trial concluded - motions reserved to date of sentence - sentence adjd without date. Bail \$500,000 surety contd.	
5.12.77	By Platt, J.- Order of Sustenance filed.	
5/13/77	Writ of habeas corpus ret & filed executed.jlj	8P
5/16/77	Sten's transcript dtd 5/9/77 & 5/10/77 filed.jlj	
continued.....		

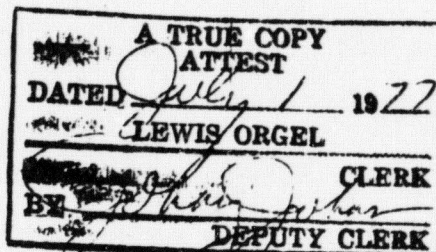
FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

QUINONES, Robinson

77 54 2
Yr. Docket No. Def

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
6.07.77	(Document No.) Stenographer's Transcript dated May 5th, 1977 filed.				GP
6.07.77	Stenographer's Transcript dated May 2nd, 1977 and May 3rd, 1977 filed.				GP
6.07.77	Stenographer's Transcript dated May 4th, 1977 filed.				GP
6.07.77	Stenographer's Transcript dated May 11th, 1977 filed.				GP
6-16-77	Voucher for expert services filed.				
7/1/77	Before Platt, J-case called-deft & counsel present deft renews motions made at conclusion of trial- denied-the court has considered the question of whe- ther the deft should be sentenced under the YCA; however in the light of the gravity of the offense, the details of which the court heard during the course of the suppression hearing and the trial itself, of and in view of the prior youthful offender treatment given to the deft, which apparently he did not benefit from, under the State court system, and in view of all the facts as outlined in the pre-sentence report, the court feels quite strongly that the deft is not eligible for WCA treatment, and therefore imposes the following sentence; on count 1 the deft is sentenced for imprisonment for a term of 5 years; and on count 2 the deft is sentenced for imprisonment for 25 years -such sentenced to run concurrently with count 1.				
7/1/77	Judgment & commitment filed. Certified copies to Marshall & Probation.jlj				
7/1/77	Notice of appeal filed,jlj				
7/1/77	Certified copy of docket entries and duplicate of Notice of Appeal mailed to the C of A.jlj				



INDICTMENT

(pp. 4a-7a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-against-

FRANK TILLMAN LEWIS and
ROBINSON QUINONES,

Defendants.

-----X

THE GRAND JURY CHARGES:

COUNT ONE

Commencing at a time unknown to the grand jury and continuing until at least the 3rd day of January 1977, within the Eastern District of New York, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES did knowingly and wilfully conspire to commit offenses against the United States, in violation of Title 18, Sections 2113(a) and 2113(d), United States Code, by conspiring to take, by force, violence and intimidation, from the person and presence of employees of the Barclay Bank of New York, 2215 Church Avenue, Brooklyn, New York approximately Eleven Thousand Eight Hundred Twenty-Two Dollars and Ninety-one cents (\$11,822.91), in United States currency, which money was in the care, custody, control, management and possession of the said Barclay Bank of New York, the

SUPERSEDING INDICTMENT

Cr. No. 77 CR 54(S)
(T. 18, U.S.C., §§371
2113(a), 2113(d) and 2)

deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES conspired, to assault and place in jeopardy the lives of the bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 371).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES committed the following

O V E R T A C T S

1. On or about January 3, 1977, within the Eastern District of New York, the defendant ROBINSON QUINONES hired a limousine.

2. On January 3, 1977, within the Eastern District of New York, the defendants FRANK TILLMAN LEWIS and ROBINSON QUINONES employed said limousine to take them to the above-described Barclay Bank, which they then entered and robbed, and to take them away from the bank after said robbery.

COUNT TWO

On or about the 3rd day of January 1977, within the Eastern District of New York, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the Barclay Bank of New York, 2215

Church Avenue, Brooklyn, New York, approximately Eleven Thousand Eight Hundred Twenty-two Dollars and Ninety-one Cents (\$11,822.91), in United States currency, which money was in the care, custody, control, management and possession of the said Barclay Bank of New York, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2.)

COUNT THREE

On or about the 3rd day of January 1977, within the Eastern District of New York, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the Barclay Bank of New York, 2215 Church Avenue, Brooklyn, New York, approximately Eleven Thousand Eight Hundred Twenty-two and Ninety-one Cents (11,822.91), in United States currency, which money was in the care, custody, control, management and possession of the said Barclay Bank of New York, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United

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States Coden, Section 2113(a) and 2.)

A TRUE BILL.

FOREMAN.

DAVID G. TRAGER
United States Attorney
Eastern District of New York

Charge of the Court

(The following occurred in the presence of the jury.)

THE COURT: Now, ladies and gentlemen, I am going to give you instructions on the law applicable to this case.

Unfortunately for you, I read the instructions to you from a prepared text. I realize this makes it more difficult for you to follow the instructions than it would be if I gave them to you extemporaneously.

However, by reading them, I think we minimize the risk of error on appeal and I think perhaps it saves time in the long run if it is done that way. So I beg your indulgence and ask you to pay particular attention to the reading of the instructions, because I realize it requires much more concentration on your part.

If my voice starts to fall or you are not catching all of the instructions, let me know in some manner so that you do not miss anything that I say.

Now that you have heard the evidence and the argument, it becomes my duty to give the instructions of the Court as to the law applicable to this case.

GR:RMG

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Charge of the Court

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2 It is your duty as jurors to follow the law as
3 stated in the instructions of the Court and to apply
4 the rules of law so given to the facts as you find
5 them from the evidence in the case.

6 You are not to single out one instruction
7 alone as stating the law but must consider the
8 instructions as a whole. Neither are you to be
9 concerned with the wisdom of any rule of law stated
10 by the Court. Regardless of any opinion you may have
11 as to what the law ought to be; it would be a
12 violation of your sworn duty to base a verdict upon
13 any other view of the law than that given in the
14 instructions of the Court, just as it would be a
15 violation of your sworn duty as judges of the facts
16 to base a verdict upon anything but all of the
17 evidence in the case.

18 You must not permit yourselves to be governed
19 by sympathy, bias, prejudice or any other consider-
20 ations not founded on evidence and these instruc-
21 tions on the law.

22 Justice through trial by jury must always
23 depend on the willingness of each individual juror
24 to seek the truth from the facts from the same
25 evidence presented to all of the jurors and to

Charge of the Court

arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment, and the denial made by the not guilty plea of the accused Robinson Quinones. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice or public opinion.

Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict regardless of the consequences.

I am not going to send the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled, however, to see any or all of these exhibits as you consider your verdict.

I suggest that you begin your deliberations and then if it would be helpful to you you may ask for any or all of the exhibits simply by sending a note to me through one of the deputy marshals who

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Charge of the Court

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will be stationed outside your jury room door.

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An indictment, such as the one in this case, is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

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There are two types of evidence and there were two types of evidence in this case from which a jury may properly find a defendant guilty of a crime. One is direct evidence, such as the testimony of an eye witness. It is my recollection, but it is your recollection that controls, that the Government contends that there were two identifying eye witnesses, Mr. Davis and Mr. Casciano.

The other is circumstantial evidence. It is my recollection -- it is your recollection which controls -- that the Government points to a great deal of circumstantial evidence, circumstantial evidence, which is the proof of fact and circumstances which rationally imply the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind.

For example, the prints of a man in the sand implied to Robinson Crusoe that there was another

Charge of the Court

man with him on the desert island, and indeed there was, the man Friday.

Thus, on the one hand, you may have direct evidence of an issue, i.e., the testimony of an eye witness; and on the other hand you may have circumstantial evidence of an issue.

The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt, both on the direct and circumstantial evidence.

At times a jury may feel that circumstantial evidence is of better quality. At other times they may feel that direct evidence is of better quality. That judgment is left entirely to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that before convicting a defendant the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

The law presumes the defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a clean slate, with no evidence

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Charge of the Court

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against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused.

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So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

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The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

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A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from the natural sympathy which we all have for others.

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It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt. If that were the rule, very few people could ever be convicted of anything. It is practically

Charge of the Court

1 impossible for a person to be absolutely sure and
2 convinced of any controverted fact which by its
3 nature is not susceptible of mathematical certainty.
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5 In consequence, the law says that a doubt
6 should be a reasonable doubt, not a possible doubt.

7 A reasonable doubt is a doubt based upon
8 reason and common sense, the kind of doubt that would
9 make a reasonable person hesitate to act. Proof
10 beyond a reasonable doubt must therefore be proof
11 of such a convincing character that you would be
12 willing to rely and act upon it unhesitatingly in
13 the most important of your own affairs.

14 The jury will remember that a defendant is
15 never to be convicted on mere suspicion or conjecture.

16 Again, a reasonable doubt means a doubt that
17 is based on reason and must be sufficient to cause
18 a prudent person to hesitate to act in the most
19 important affairs of his or her life. The require-
20 ment of proof beyond a reasonable doubt operates on
21 the whole case and not on the separate bits of
22 evidence. Each individual item of evidence need not
23 be proven beyond a reasonable doubt.

24 Now I am going to discuss the counts of the
25 indictment with you in reverse order. That is, I'm

Charge of the Court

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2 going to discuss count three of the indictment
3 first, count two second and count one, the conspir-
4 acy count, last. That is not to suggest that you
5 necessarily should consider them in that order in
6 your deliberations; but for the purposes of these
7 instructions, it is easier for me to give them to
8 you in that order.

9 Count three of the indictment charges that
10 "On or about the 3rd day of January, 1977, within
11 the Eastern District of New York, the defendant
12 Robinson Quinones and Frank Tillman Lewis, knowingly
13 and wilfully, by force, violence and intimidation,
14 did take from the person and presence of employees
15 of the Barclay Bank of New York, 2215 Church Avenue,
16 Brooklyn, New York, approximately \$11,822.91 in
17 United States currency, which money was in the care,
18 custody and control, management and possession of
19 the said Barclay Bank of New York, the deposits of
20 which bank then and there insured by the Federal
21 Deposit Insurance Corporation," all in violation of
22 Title 18, United States Code, Section 2113(a)
23 and Title 18, United States Code, Section 2.

24 Now, Section 2113(a), which is the statute
25 alleged to have been violated, reads in pertinent

Charge of the Court

part as follows: 'Whoever, by force and violence, or by intimidation, takes or attempts to take from the person or presence of another any property or money or anything of value belonging to, in the care, custody and control, management or possession of any bank or any savings and loan association shall be in violation of the law.'

In this count the Government also alleges a violation of Section 2, Title 18 of the United States Code, which is the so-called aiding and abetting section. That section provides as follows:

"Whoever commits an offense against the United States, or aids, abetts, counsels, commands, indices or procures its commission is punishable as a principal. Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

The essential elements of the crime charged in count three of the indictment which must be proved beyond a reasonable doubt, are one, the act or acts of taking from the person or presence of another money belonging to or in the care, custody, control, management or possession of a

Charge of the Court

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2 bank as charged. Two, the act or acts tof taking
3 by force, violence or intimidation.

4 Three, the doing of such an act or acts
5 knowingly and wilfully.

6 And four, that the bank was a bank, the
7 deposits of which were insured by the FDIC.

8 It is charged in count two of the indictment
9 that "On or about the 3rd day of January, 1977,
10 within the Eastern District of New York, the
11 defendant Robinson Quinones and Frank Tillman
12 Lewis knowingly and wilfully, by force, violence and
13 intimidation, did take from the person and presence
14 of employees of the Barclay Bank of New York, 2215
15 Church Avenue, Brooklyn, New York, approximately
16 \$11,822.91 in United States currency, which money
17 was in the care, custody, control, management and
18 possession of the said Barclay Bank of New York,
19 the deposits of which bank were then and there
20 insured by the FDIC, and in commission of this
21 act and offense the defendant Robinson Quinones and
22 Frank Tillman Lewis did assault and place in
23 jeopardy the lives of the bank employees as well
24 as the lives of other persons present by the use of
25 a dangerous weapon," all in violation of Title 18,

Charge of the Court

United States Code, Section 2113(d) and Section 2, the so-called aiding and abetting section.

Section 2113(d) provides in pertinent part:

"That whoever in committing or attempting to commit any offense defined in subsection 2113(a)," which is the section I read to you in connection with count three, "assaults any person or puts in jeopardy the lives of any person by use of a dangerous weapon or device shall be in violation of the law."

Then as I indicated this count also charged a violation of Section 2, the so-called aiding and abetting section, which I read to you and about which I will talk to you more in a moment.

(Continued on next page.)

4AM3GR/flp.

Charge

2 THE COURT: (Continuing) Now as to Count two,
3 the following are the essential elements of the
4 crime which are required to be proved beyond a reason-
5 able doubt in order to establish the offense charged
6 therein.

7 One, the act or acts of taking from the
8 person or persons of another money belonging to or in
9 the care, custody, and management, possession or con-
10 trol of any bank as charged.

11 Two, the act or acts of taking by force and
12 violence or by intimidation.

13 Three, the act or acts of assaulting or putting
14 in jeopardy the life of any person by the use of a
15 dangerous weapon or device while engaged in taking
16 such money from the bank as charged.

17 Four, doing such an act or acts knowingly or
18 wilfully.

19 Five, the bank was one that the deposits of
20 which were insured by the F.D.I.C.

21 As used in Section 2113(a) and (d), the term
22 "Bank", means any bank the deposits of which are
23 insured by the F.D.I.C.

24 You will recall, I believe -- it is your
25 recollection, of course, that controls -- that the

2 1 Government read a stipulation between the parties
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3 where it was agreed that the Barclays Bank deposits
4 were so insured.

5 Now, the words "To take by intimidation" are
6 used in both Counts three and two. To take or attempt
7 to take by intimidation means wilfully to take or
8 attempt to take by putting in fear of bodily harm.
✓ 9 Such fear must arise from the wilfull conduct of the
10 accused, rather than from some mere tempermental
11 timidity of the victim.

12 However, the fear of the victim may not be
13 so great as to result in terror, panic or hysteria.
14 A taking or an attempt to take by intimidation must
15 be established by proof of one or more acts or
✓ 16 statements of the accused which were done or made in
17 such a manner and under such circumstances as would
✓ 18 produce in the ordinary person fear of bodily harm.

19 However, actual fear need not be proved. Fear,
20 like intent, may be inferred from statements made or
21 acts done or admitted by the accused and by the
22 victim as well and from all the surrounding circum-
23 stances shown by the evidence in the case.

24 In Count two the word "Assault" is used.
25 If the jury should find beyond a reasonable doubt

Charge

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✓ 2 from the evidence in the case that the accused did
3 wilfully commit robbery of the bank as charged, then
4 the jury must proceed to determine whether the evi-
5 dence in the case establishes the accused in committ-
6 ing the robbery of the bank assaulted or put in
7 jeopardy the lives of the said bank employees, as
8 well as the lives of the other persons present as
9 charged in the indictment.

10 Any wilfull attempt or threat to inflict
11 injury upon the person of another when coupled with
12 an apparent present ability to do so, or any
13 intentional display or force such as would give
14 the victim reason to fear or expect immediate bodily
15 harm constitutes an assault.

16 Of course an assault where a person is
17 actually hit, as was alleged in this case, that does
18 constitute assault also.

19 Assault may be committed, furthermore without
20 actually touching or striking or doing bodily harm
21 to the person of another. So a person who has the
22 apparent present ability to inflict bodily harm or
23 injury upon another person and wilfully attempts or
24 even threatens to inflict such bodily harm as by
25 intentionally flourishing or pointing a pistol or

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Charge

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gun at another person may be found to have assaulted such person.

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A dangerous weapon or device includes anything capable of being readily operated, manipulated, wielded or otherwise used by one or more persons to inflict severe bodily harm or injury upon another person.

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So an operable firearm, such as a pistol, revolver or other gun capable of firing a bullet or other ammunition may be found to be a dangerous weapon or device.

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To put in jeopardy the life of a person by the use of a dangerous weapon or device means then to expose such person to risk of death or fear of death by the use of such dangerous weapon or device.

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Any variance between the allegations of the indictment and the evidence in the case as to the size and type of any firearm or gun which may have been involved in the commission of the alleged offense is immaterial except on the issue of identification.

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Of course, any such variance is not immaterial on the latter issue.

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I said that I would talk to you more about the Section 2 of Title 18 or the so-called aiding and abetting section which you will recall provides that

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Charge

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whoever commits an offense against the United States or aids, abets, commands, induces or procures its commission is punishable as a principal.

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"Whoever wilfully causes an act to be done which is directly performed by him or another would be an offense against the United States, is punishable as a principal."

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The guilt of a defendant may be established without proof that the accused person did every act constituting the offense charged. In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense.

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Participation is wilful if done voluntarily and intentionally and with a specific intent to do something the law forbids or with a specific intent to fail to do something the law requires to be done. That is to say, with bad purpose either to disobey or to disregard the law. In order to aid and abet another to commit a crime it is necessary that the accused wilfully associate himself in some way with the criminal venture and wilfully participate in it as he would in doing something that he wishes to bring about. That is to say, that he wilfully seeks by some act or omission of his to make the criminal venture

succeed.

An act or omission is wilfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or the specific intent to fail to do something the law requires to be done. That is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find the defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons and that the defendant participated in its commission.

Mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

The crime charged in this case is a serious crime which requires proof of specific intent before the defendant can be convicted. Specific intent is a term which implies more than a general intent to commit the act.

The Government must prove that the defendant

Charge

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2 knowingly did an act which the law forbids or knowingly
3 failed to do something which the law requires to be
4 done, purposely intending to violate the law.
5 Such intent may be determined from all the facts and
6 circumstances surrounding the case.

7 An act is done knowingly if done voluntarily
8 and intentionally and not because of mistake or accident
9 or other innocent reason. The purpose of adding the
10 word "Knowingly", was to insure that no one would be
11 convicted for an act done because of mistake, accident
12 or other innocent reason.

13 An act is done wilfully if done voluntarily and
14 intentionally and with the specific intent to do some-
15 thing the law forbids. That is to say, with bad pur-
16 pose either to disobey or to disregard the law.

17 Knowledge and intent ordinarily may not be
18 proved directly, because there is no way of fathoming
19 or scrutinizing the operation of the human mind.
20 But you may infer the defendant's knowledge and intent
21 from the surrounding circumstances. You may consider
22 any statement made and done or omitted by a defendant
23 and all other facts and circumstances in evidence
24 which indicates the state of mind.

25 The Court at one point during the trial, I believe

Charge

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2 it was at the point when the description of the arrest
3 of the defendant Quinones was given by Agent Farrell
4 admitted in evidence two guns, I believe, and one sawed
✓ 5 off shotgun, with a cautioning instruction to you,
6 which I said I would amplify in the charge of the
7 Court at the conclusion of the case, and these are
8 the amplifications of those instructions with respect
9 to those particular exhibits.

10 The fact that the accused may have committed
11 -- and I emphasize the word "May" -- another offense,
12 in this case the possession of guns, at some time is
13 not any evidence or proof whatever that at another
14 time the accused committed the offense charged in
15 the indictment, even though you might think that both
16 defenses are of a similar or possibly of a similar
17 nature.

18 Evidence as to an alleged later offense of a
19 like nature may not therefore be considered by the
20 jury in determining whether the accused did the act
21 charged the indictment, nor may such evidence be
22 considered for any other purpose whatever unless the
23 jury first find that other evidence in the case stand-
24 ing along establishes beyond a reasonable doubt that
25 the accused did the act charged in the indictment,

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Charge

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leaving aside only the question of whether he did it knowingly, intentionally and as part of a common scheme or plan and not because of accident, mistake or other innocent reason.

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If the jury should find beyond a reasonable doubt from other evidence in the case that the accused did the act charged in the indictment, then the jury may consider evidence as to an alleged later offense, of a stated or a claim similar nature, in determining the state of mind, knowledge or intent or whether the accused acted as part of a common scheme and plan, and in connection with which the accused did the act charged in the indictment, and where all the elements of an alleged later offense are established by evidence, which is clear and conclusive, the jury may, but is not obliged, to draw the inference, and if you find in doing the act charged in the indictment the accused acted pursuant to a common scheme or plan or otherwise acted wilfully, knowingly and with specific intent and not because of mistake or accident or other innocent reason.

(contin ued next page)

Charge of the Court

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2 THE COURT: Continuing) Now, it is charged in
3 count 1 of the indictment which is the conspiracy
4 count, that commencing at a time unknown to the Grand
5 Jury and continuing until at least the 3rd day of
6 January, 1977, within the Southern District of New York,
7 the defendant Frank Tilma. I'm sorry -- the
8 defendant Robinson Quinones and Frank Tilman Lewis
9 did knowingly and willfully conspire to commit
10 offenses against the United States in violation of
11 Title 18, Section 2113(a), and 2113(b) by conspiring
12 to take by force, violence and intimidation from the
13 person and presence of employees of the Barclay's
14 Bank of New York, 2215 Church Avenue, Brooklyn, New
15 York, approximately \$11,882.91 in U.S. currency, which
16 money was in the care, custody, control, management
17 and possession of the said Barclay's Bank of New York,
18 the deposits of which were then and there insured by
19 FDIC; and in the commission of this act and offense,
20 the defendants Robinson Quinones and Frank Tilman
21 Lewis conspired to assault and place in jeopardy of
22 the bank employees as well as the lives of other
23 persons present by the use of a dangerous weapon in
24 violation of Title 18, United States Code Section 371.

25 In furtherance of the said unlawful conspiracy

Charge of the Court

1 and for the purpose of effecting the objectives thereof,
2 the defendant Robert Quinones and Frank Tilman Lewis
3 committed the following overt acts:
4

5 (1) On or about January 3, 1977, within the
6 Eastern District of New York, the defendant Robinson
7 Quinones hired a limousine;

8 (2) On January 3, 1977, within the Eastern
9 District of New York, the defendants Frank Tilman
10 Lewis and Robinson Quinones employed said limousine to
11 take them to the above-described Barclay's Bank, which
12 they then entered and robbed and to take them away
13 from the bank after said robbery.

14 Now, Section 371 of Title 18 of the United
15 States Code provides in pertinent part that:

16 "If two or more persons conspire either to
17 commit any offense against the United States or any
18 agency thereof in any manner or for any purpose, and
19 one or more of such persons do ^{any} act to effect the object
20 of the conspiracy, each shall be in violation of the
21 law."

22 The following are the essential elements which
23 are required to be proven beyond a reasonable doubt
24 in order to establish the offense of the conspiracy
25 charged in the indictment:

Charge of the Court

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2 (1) That there was an agreement or conspiracy
3 between two or more persons to violate the law as
4 charged in the indictment;

5 (2) That the conspiracy described was willfully
6 formed and existing at or about the time alleged;

7 (3) That the conspiracy was so willfully
8 formed and existing at or about the time alleged;

9 (4) That the conspiracy was so willfully formed
10 and existing, for the purpose of taking by force,
11 violence and intimidation from the person and presence
12 of the employees, monies which were in the care,
13 custody, control, management and possession of said
14 bank, the deposits of which were then and there
15 insured by the FDIC, or for the purpose of assaulting
16 and placing in jeopardy the lives of the employees of
17 said bank, as well as the lives of other persons
18 present by the use of a dangerous weapon;

19 (5) That the defendant willfully became a
20 member of the conspiracy;

21 (6) That one of the conspirators knowingly
22 committed one of the overt acts charged in the
23 indictment at or about the time and place alleged;

24 (7) That such overt act was knowingly done in
25 furtherance of the object of the conspiracy charged;

1
2 (8) That the defendant was knowingly and
3 willfully a member of the conspiracy with the intent
4 to further one of the objectives.

5 If the jury should find beyond a reasonable
6 doubt from the evidence in the case that the existence
7 of the conspiracy charged in the indictment has been
8 proven, and that during the existence of the conspiracy
9 one of the overt acts alleged was knowingly done by
10 one or more of the conspirators in furtherance of some
11 object or purpose of the conspiracy, then proof of the
12 conspiracy offense charged is complete, and it is
13 complete as to every person found by the jury to have
14 been willfully a member of the conspiracy at the time
15 the overt act was committed.

16 What is a conspiracy? A conspiracy is a
17 combination of two or more persons, by concerted action,
18 to accomplish some unlawful purpose. So a conspiracy
19 is a kind of partnership in criminal purposes, in which
20 each member becomes the agent of every other member.
21 The gist of the offense is a combination or agreement
22 to disobey or to disregard the law.

23 Mere similarity of conduct among various
24 persons, and the fact they may have associated with
25 each other and may have assembled together and discussed

Charge of the Court

1 common aims and interests, ~~does~~ not necessarily establish
2 the existence of a conspiracy. Mere association may
3 not, in and of itself, be the basis for an inference
4 of guilt of a conspiracy.
5

6 However, the evidence in the case need not show
7 that the members entered into any express or formal
8 agreement or that they directly, by words spoken or in
9 writing, stated between themselves what their object
10 or purpose was to be, or the details thereof, or
11 the means by which the object or purpose was to be
12 accomplished.

13 What the evidence in the case must show beyond
14 a reasonable doubt, in order to establish proof that
15 a conspiracy existed, is that the members in some way
16 or manner, or through some contrivance, positively or
17 tacitly came to a mutual understanding to try to
18 accomplish a common and unlawful plan.

19 The evidence in the case need not establish that
20 all the means or methods set forth in the indictment
21 were agreed upon to carry out the alleged conspiracy;
22 nor that all means or methods which were agreed upon
23 were actually used or put into operation; nor that all
24 of the persons charged to have been members of the
25 alleged conspiracy were such.

1 What the evidence in the case must establish
2 beyond a reasonable doubt is that the alleged
3 conspiracy was knowingly formed, and that one or more
4 of the means or methods described in the indictment
5 were agreed upon to be used, in an effort to effect or
6 accomplish some object or purpose of the conspiracy,
7 as charged in the indictment; and that two or more
8 persons, including the accused, were knowingly members
9 of the conspiracy as charged in the indictment.
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Charge of the Court

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2 In your consideration of the evidence in the
3 case as to the offense of conspiracy charge, you should
4 first determine whether or not the conspiracy existed as
5 alleged in the indictment. If you conclude that the
6 conspiracy did exist, you should next determine whether
7 or not the accused wilfully became a member of the
8 conspiracy.

9 If it appears beyond a reasonable doubt from the
10 evidence in the case that the conspiracy alleged in the
11 indictment was wilfully formed, and that a defendant
12 wilfully became a member of the conspiracy either at its
13 inception or afterwards, and that thereafter one or more
14 of the conspirators committed one or more overt acts in
15 furtherance of some object or purpose of the conspiracy,
16 then there may be a conviction even though the conspira-
17 tors may not have succeeded in accomplishing their
18 common object or purpose, and in fact, may have failed
19 in so doing.

20 The extent of any defendants' participation
21 moreover is not determinative of his guilt or innocence.
22 A defendant may be convicted as a conspirator even though
23 he may have played only a minor part in the conspiracy.

24 An "overt act" is any act knowingly committed
25 by one of the conspirators in an effort to effect or

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Charge of the Court

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accomplish some object or purpose of the conspiracy.

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The overt act need not be criminal in nature, if

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considered separately and apart from the conspiracy.

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It may be as innocent as the act of a man walking across

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the street, or driving an automobile, or using a

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telephone. It must, however, be an act which follows

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and tends towards accomplishment of the plan or scheme.

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It must be knowingly done in furtherance of some object

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or purpose of the conspiracy charged in the indictment.

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One may become a member of a conspiracy without

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full knowledge of all of the details of the conspiracy.

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On the other hand, a person who has no knowledge of a

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conspiracy but happens to act in a way which furthers

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some object or purpose of the conspiracy, does not

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thereby become a conspirator.

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Before the jury may find that the defendant or

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any other person has become a member of the conspiracy,

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the evidence in the case must show beyond a reasonable

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doubt that the conspiracy was knowingly formed, and that

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the defendant or other person who claimed to have been

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a member wilfully participated in the unlawful plan,

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with the intent to advance or further some object or

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purpose of the conspiracy.

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To act or participate wilfully means to act or

Charge of the Court

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2 participate voluntarily or intentionally and with
3 specific intent to do something the law forbids...that
4 is to say, to act or participate with the bad purpose
5 either to disobey or disregard the law. So, if a
6 defendant or any other person with understanding of the
7 unlawful character of the plan knowingly encourages,
8 advises, or assists for the purpose of furthering the
9 undertaking or scheme, he thereby becomes a willful
10 participant -- a conspirator.

11 One who wilfully joins in an existing conspiracy
12 is charged with the same responsibility as if he had
13 been one of the originators or instigators of the
14 conspiracy.

15 In determining whether a conspiracy existed, the
16 jury should consider the actions and the declarations
17 of all the alleged participants. However, in determining
18 whether a particular defendant was a member of a
19 conspiracy, if any, the jury should consider only his
20 acts and statements. He cannot be bound by the acts
21 or declarations of other participants until it is
22 established that a conspiracy existed, and that he was
23 one of its members.

24 Whenever it appears beyond a reasonable doubt
25 from the evidence in the case that a conspiracy existed,

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and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy and in furtherance of some object or purpose of the conspiracy.

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Otherwise, any admission or incriminatory statement made or act done outside of the Court by one person may not be considered as evidence against any person who was not present and did not hear the statement made or see the act done. Therefore, the statements of any conspirators which are not in furtherance of the conspiracy or made before the conspiracy or after its termination, may be considered as evidence only against the person making them.

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The indictment charges a conspiracy between the defendant Robinson Quinones and Frank Tillman Lewis both of whom who are named in the indictment as co-conspirators. A person cannot conspire with himself

Charge of the Court

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2 and therefore, you cannot find the defendant guilty of
3 conspiracy unless you find beyond a reasonable doubt
4 that he participated in the conspiracy as charged with
5 at least one other person.

6 Now, defendant claims the Government has failed
7 to prove beyond a reasonable doubt that he was one of
8 the perpetrators of the crime. The evidence in this
9 case raises the question of whether or not the defendant
10 was one of the perpetrators of the crime or in fact the
11 criminal actor and necessitates your resolving any
12 conflict or uncertainty in testimony on that issue.
✓ 13 The burden of proof is on the prosecution with reference
14 to every element of the crime charged and this burden
15 includes the burden of proving beyond a reasonable
16 doubt the identity of the defendant as one of the
17 perpetrators of the crime charged.

18 If you find beyond a reasonable doubt that the
19 defendant used a name other than his name in order to
20 avoid subsequent identification that would be a fact
21 from which you may, but need not, infer a consciousness
22 of guilt on his part.

23 If you find that the defendant fled immediately
24 after engaging in conduct that would be criminal if
25 done knowingly, such flight is a fact from which you may,

Charge of the Court

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2 but need not, infer a consciousness of guilt on his
3 part. It is evidence which you may consider along with
4 all the other evidence in determining the defendant's
5 guilty knowledge. The weight and significance of the
6 evidence, of course, is for you and you alone to
7 determine.

8 Statements and arguments of counsel are not
9 evidence in the case -- I said that to you several times
10 during the course of the trial and that is true --
11 unless made as an admission or stipulation of fact.
12 When the attorneys on both side stipulate or agree as
13 to the existence of a fact -- as they did with respect
14 to a number of facts which were read to you as
15 stipulations -- you must, unless otherwise instructed,
16 accept the stipulation as evidence and regard that fact
17 as proved.

18 Unless you are otherwise instructed, the evidence
19 in the case always consists of the sworn testimony of
20 the witnesses, regardless of who may have called them;
21 and all exhibits received in evidence, regardless of
22 who may have produced them and all facts which may have
23 been admitted or stipulated; and all applicable
24 presumptions stated in these instructions.

25 Any evidence as to which an objection was

Charge of the Court

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2 sustained by the Court and any evidence ordered stricken
3 by the Court must be entirely disregarded.

4 Evidence does include, however, what is brought
5 out from witnesses on cross-examination as well as what
6 is testified to on direct examination.

7 Unless you are otherwise instructed, anything
8 you may have seen or heard outside the courtroom is not
9 evidence and must be entirely disregarded.

10 You are to consider only the evidence in the
11 case and your verdict is to be based on the evidence only.
12 But in your consideration of the evidence you are not
13 limited to the bald statements of the witnesses. In
14 other words, you are not limited solely to what you see
15 and hear as the witnesses testify. You are permitted to
16 draw, from facts which you find may have been proved,
17 such reasonable inferences as you feel are justified in
18 the light of experience.

19 Inferences are deductions or conclusions which
20 reason and common sense lead the jury to draw from facts
21 which have been established by the evidence in the case.

22 If a lawyer asks a witness a question which
23 contains an assertion of fact you may not consider the
24 assertion as evidence of that fact. The lawyers' state-
25 ments are not evidence.

Charge of the Court

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2 Evidence relating to any statement or act or
3 omission, claimed to have been made or done by a
4 defendant outside of Court and after a crime has been
5 committed -- and I believe in this case the Government
6 points to the statement made by the defendant at the
7 time of his arrest -- should always be considered with
8 caution and weighed with great care and all such evidence
9 should be disregarded entirely unless the evidence in
10 the case convinces the jury beyond a reasonable doubt
11 that the statement or act or omission was knowingly made
12 or done.

13 A statement or act or omission is "knowingly"
14 made or done if done voluntarily and intentionally and
15 not because of mistake or accident or other innocent
16 reason.

17 In determining whether any statement or act or
18 omission claimed to have been made by a defendant outside
19 of Court, and after a crime has been committed, was
20 knowingly made or done, the jury should consider the
21 age, sex, training, education, occupation and physical
22 and mental condition of the defendant and also all other
23 circumstances in evidence surrounding the making of the
24 statement or act or omission.

25 If the evidence in the case does not convince

Charge of the Court

beyond a reasonable doubt that the statement was made voluntarily and intentionally you should disregard it entirely. On the other hand, if the evidence in the case does show beyond a reasonable doubt that a statement was in fact voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the statement.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

(Continued on next page)

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2 THE COURT (Continuing): You should carefully
3 scrutinize all the testimony given, the circumstances
4 under which each witness has testified, and every matter
5 in evidence which tends to show whether a witness is
6 worthy of belief. Consider each witness' intelligence,
7 motive and state of mind and the demeanor and manner
8 while on the stand. Consider the witness' ability to
9 observe matters as to which he has testified and whether
10 he impresses you as having an accurate recollection of
11 these matters. Consider also any relation each witness
12 may bear to either side of the case; the manner in
13 which each witness might be affected by the verdict;
14 and the extent to which, if at all, each witness is
15 either supported or contradicted by other evidence in
16 the case.

17 Inconsistencies or discrepancies in the
18 testimony of a witness or between the testimony of
19 different witnesses, may or may not cause the jury to
20 discredit such testimony. Two or more persons
21 witnessing an incident or a transaction may see or hear
22 it differently; and innocent misrecollection, like
23 failure of recollection, is not an uncommon experience.
24 In weighing the effect of a discrepancy, always consider
25 whether it pertains to a matter of importance or an

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Charge of the Court

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unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

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You will give the testimony of each witness such credibility, if any, as you may think it deserves.

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The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony.

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It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

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If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

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The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be

Charge of the Court

given to any prior conviction as impeachment.

The defendant has the right not to testify. The fact that the defendant in this case did not testify may not be used against him for any purpose. No inferences whatever may be drawn from the fact that he did not testify. Moreover, you are ordered not even to consider it during your deliberations.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his or her client because the attorney has made objections.

Upon allowing the testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a

Charge of the Court

question addressed to a witness, the jury must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness would have said if he had been permitted to answer a question.

The fact that the Court has asked one or more questions of a witness for clarification or admissibility of evidence purposes is not to be taken by you in any way as indicating that the Court has any opinion as to the guilt or innocence of the defendant in this case. That determination is up to you and you alone based on all the facts in this case and the applicable law in these instructions.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

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The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

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It is your obligation, as jurors, to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your own convictions as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Remember, you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Charge of the Court

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the defendant be proved guilty beyond a reasonable doubt say so. If not so proved guilty, say so.

You must render a verdict with respect to each of the three counts of the indictment which I have heretofore described to you.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity. The public is entitled to be assured of this.

Charge of the Court

Remember, if any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at any impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the jury room, juror No. 1, the lady seated closest to me in the first row, will act as your Foreperson unless she opts not to do so. If she opts not to do so, you will select one of your number to act as your Foreman. The Foreman will preside over your deliberations and will be your spokesman here in court.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note via the Deputy Marshal signed by your Foreman or by one or more members of the jury.

No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never attempt to communicate with any member of the jury on any subject

Charge of the Court

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2 touching on the merits of the case otherwise than in
3 writing or orally here in open court.

4 You will note from the oath which will be taken
5 shortly by the Deputy Marshals that they, too, are
6 forbidden to communicate in any way or manner with
7 any member of the jury on any subject touching on the
8 merits of the case.

9 Bear the following in mind because it is very
10 important: You are never to reveal to any person --
11 not even to me, the Court -- how the jury stands
12 numerically or otherwise on the question of the guilt
13 or innocence of the accused until after you have
14 reached a unanimous verdict.

15 In other words, do not -- and I repeat the word
16 "not" -- send me a note saying the jury stands so
17 much for the guilt and so much for the innocence of the
18 defendant -- so many persons for the guilt; so many
19 persons for the innocence of the defendant.

20 If you do that, chances are we will have to
21 declare a mistrial and retry the case.

22 If you are hopelessly deadlocked -- and I hope
23 that does not arise -- send me such a note.

24 When you have reached a unanimous verdict send
25 me such a note and state your verdict through your

Charge of the Court

1 Foreperson here in open court in response to the
2 questions which will be directed to you by the Clerk
3 of the Court.
4

5 Those are the instructions of the Court.

6 Take five minutes during which time I will
7 discuss the instructions with the attorneys. You will
8 then return.

9 The alternates will be discharged and then you
10 may begin your deliberations but not before.

11 During this short recess do not discuss the
12 case.

13 (Jury excused.)

14 (The following was heard in the absence of the
15 jury:)

16 THE COURT: Yes, Ms. Schwartz?

17 MS. SCHWARTZ: I wanted to comment on the
18 similar acts charge.

19 I am not sure that there was anything stated --
20 my notes indicate that the charge said, it could be
21 considered -- the possession of the guns could be
22 considered as to state of mind, knowledge, intent,
23 common scheme or plan but didn't say anything about
24 the issue of identity, and I have a similar acts
25 charge with that language which I didn't submit

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

- against -

ROBINSON QUINONES,
Defendant-Appellant.
On Appeal from the U.S. Dist. Court for the
Eastern District of New York

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, James A. Steele being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 112 West 136th Street; New York, New York

That on the 19th day of August 19 77 at 225 Cadman Plaza
Brooklyn, New York

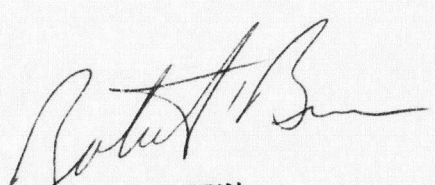
deponent served the annexed
Appendix Brief

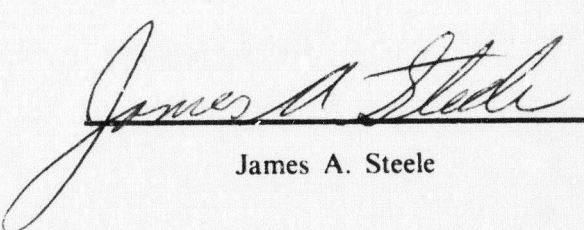
U.S. Atty Eastern District
David Trager

upon

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 19th
day of August, 19 77


ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979


James A. Steele